

**WEST VIRGINIA DIVISION OF BANKING**  
**PROCESS TO BE FOLLOWED BY BANK HOLDING COMPANY APPLICANTS**

Applicants are encouraged to schedule a pre-filing conference with the West Virginia Division of Banking. This conference will provide information regarding the application process as well as make available information in the West Virginia Division of Banking's library.

If an acquisition is to be completed as a direct tender offer or if a bank holding company is acquiring another bank holding company, that is a request for approval of only one transaction. However, if a state chartered interim (phantom) bank is used to make the acquisition, that is a request for approval of three transactions:

1. Charter of an interim (phantom) bank
2. Merger of the existing bank and the interim bank
3. Acquisition of the resultant bank by the bank holding company

I. **INCORPORATE THE PROPOSED BANK HOLDING COMPANY** (in the form of a business corporation -- not required to be a West Virginia corporation). Non-West Virginia corporations must obtain a Certificate of Authority from the Secretary of State.

A. Reserve name with the Secretary of State.

**NOTE:** Where the proposed name contains the word "Bank" or a variation of the word "Bank", the Secretary of State requires clearance of the names from the West Virginia Division of Banking.

B. File Articles of Incorporation under the West Virginia Corporation Act with the Secretary of State (two originally signed articles required.) One will be returned to you and should be filed with the County Clerk or County Commissioner in which the principal office is located. A copy of the Articles of Incorporation and the Certificate of Incorporation as issued by the Secretary of State should be provided to the West Virginia Division of Banking.

II. **DETERMINE TYPE OR FORM OF ACQUISITION**

A. If direct tender offer is used, see III.

B. If acquisition of the target is to be by a merger process through the use of an acquisition vehicle, i.e. "interim bank" or "interim bank holding company":

(1). Chartering of an interim (phantom) bank

- (a). Where target bank is a National Bank, file application for interim or phantom bank charter under federal requirements with the Regional Administrator of the Comptroller of the Currency.
- (b). Where target bank is a State-chartered bank.

- (1) Reserve name with the Secretary of State.
  - (2) Complete procedures to obtain state bank charter.
  - (3) File Articles of Incorporation under the West Virginia Corporation Act with the Secretary of State. Remember that when the word "Bank" or a variation of the word "Bank" is used in a corporate name, the articles must be cleared with the WVDOB first. Present two originally signed copies of the Articles of Incorporation. One will be returned to you to be filed with the Clerk or the County Commissioner in which the principal office is located. Copies of such Articles of Incorporation and the Certificate of Incorporation should be provided to the West Virginia Division of Banking.
  - (4) State non-member banks file Phantom/Merger Application (FDIC 6220/07) with FDIC and West Virginia Division of Banking. For West Virginia Division of Banking purposes, file two originally signed copies, in final form, no drafts please.
  - (5) State member banks file Federal Reserve Membership and Merger Applications FR2083 and FR2070 with West Virginia Division of Banking. For West Virginia Division of Banking purposes, file two originally signed copies, in final form, no drafts please.
  - (6) An examination and investigation fee of \$500 for each interim (phantom) bank application must be enclosed with the application. Please make the check payable to the West Virginia Division of Banking.
- (2). Merging the existing bank and the interim bank

When the resultant bank is to be a National Bank, file under federal requirements with the Regional Administrator of the Comptroller of the Currency.

When resultant bank is to be a State-chartered bank, file with FDIC or Federal Reserve as follows:

- (a). If a state non-member bank will result: For West Virginia Division of Banking and FDIC purposes, filing of the FDIC 6220/07 application required under II.B.(1)(b)(4) will be sufficient. West Virginia Division of Banking also requires an examination and investigation fee of \$100 for each merger application.
- (b). If a state member bank will result: For West Virginia Division of Banking purposes, filing of the FR2083 and FR2070 in II.B.(1)(b)(5) will be sufficient.

WVDOB also requires an examination and investigation fee of \$100 for each merger application.

- (3). An interim bank holding company may be chartered without filing any regulatory applications. Articles of Incorporation must be cleared with West Virginia Division of Banking prior to filing with the West Virginia Secretary of State.

III. **COMPLETE THE BANK HOLDING COMPANY APPLICATION FOR ACQUISITION OF THE BANK.**

- A. Federal Reserve Regulations require publication of notice of the proposed acquisition and a 30 day public comment period from date of first publication. West Virginia Community Reinvestment regulations require that as part of this published notice, the applicant must also add a paragraph indicating public comment may be made to the Commissioner of Banking. See Section 5.1 of West Virginia Legislative Rules Implementing the West Virginia Community Reinvestment Act.
- B. File bank holding company application or notice, including proof of publication discussed under III.A. with the West Virginia Division of Banking and the applicable Federal Reserve Bank. Applicable Federal Reserve Forms must be completed by the Applicant and submitted.

(1). The West Virginia Division of Banking requires specifically:

- (a). Two copies, containing original signatures, of the applicable Federal Reserve Form or Notice, in final form, no drafts please.

**NOTE:** If the bank or bank holding company acquisition is subject to the Bank Merger Act (12 USC 1828(c)) and forms are not required to be filed with the Federal Reserve System pursuant to 225.12(d)(2) of Regulation Y, applicant must file with the WVDOB three copies of any application required to be filed with any federal supervisory agency. Please submit original signatures.

All applications should include a listing of the assumptions made in preparing the cash flow projections for the bank holding company.

- (b). Certification from legal counsel in substantially the following form: "I certify that I have examined the agreement(s) between the participating institutions dated \_\_\_\_\_ and related documents. It is my opinion the agreement(s) is(are) legally sufficient and all applicable laws and regulations have been complied with in connection with its (their) adoption."

- (c). A letter from the applicant's legal counsel stating that the applicant has been informed of its duties and responsibilities in regard to compliance with both state and federal securities laws. The letter must state the specific filings which the applicant will make with state and federal securities regulators. If the transaction is exempt

from registration requirements, the letter must provide an explanation for such exemption.

A copy of any proxy statements or offering circulars or the SEC S-4 Registration Statement prepared in connection with the applicant's proposed acquisition should be forwarded to the Department of Banking upon completion and filing with the appropriate securities regulator(s).

(d). An analysis of proforma risk based capital and the resulting institution's ability to comply with federal regulations regarding minimum risk based capital levels.

(e). A summary of the market value and book value of the applicant and target bank's stock using the same financial statement date as presented in the application and the prior two year-end periods. Also, please include proforma book values to give the dilutive effect of the proposed transaction.

(f). A copy of the most recent independent audit, if any, of the applicant's and target bank's books and records performed by independent public accountants.

(g). An organization chart for both the target and applicant which reflects all direct and indirect subsidiaries of each organization. If nonbank subsidiaries exist, please briefly describe the nature of the subsidiary's business and include total assets and revenues for most recent operating period end.

(h). Copies of Community Reinvestment Act statements prepared by applicant's existing subsidiaries (if applicable) and each target bank and copies of any public comments pertaining to the information contained in those statements within the last two years.

(i). Additional information required to assess compliance with provisions of Community Reinvestment Act (see General Rules Implementing West Virginia Community Reinvestment Act, effective July 1, 1993). Such information should be furnished for each of the subsidiaries (if applicable) of applicant and each target bank.

(j). Tear sheet reflecting the required federal publication of the notice of application which includes the additional information as required by Section 5.1 of the General Rules Implementing the West Virginia Community Reinvestment Act (July 1, 1993).

(k). An examination and investigation fee of \$4,500 for each bank holding company application. Please make the check payable to the West Virginia Division of Banking.

- C. Notification of each application filed will be furnished to all banks and other interested parties through an "Official Notification" list by the West Virginia Division of Banking. Parties who wish to intervene have 10 days from date of receipt to file a petition to intervene. The hearing shall be held at the time and place set by the West Virginia Board of Banking and Financial Institutions (WVBBFI). Notification of such a hearing shall be provided to all parties by WVDOB no less than 10 days nor more than 30 days prior to such hearing. An ORDER will be issued by the WVBBFI regarding action taken on the application(s).
- D. If any dissenting shareholder exercises his rights pursuant to state or federal law, the WVDOB should be advised, prior to the scheduling of the hearing, as to the impact of the transactions on subject acquisition.
- E. Both shareholder and WVBBFI approval are required prior to the filing of articles of merger with Secretary of State and County Clerk of the County Commission in which the principal office is located.
- F. Notify West Virginia Division of Banking of effective date.

**NOTE:** It is the applicant's responsibility to indicate by marking "CONFIDENTIAL" any part of the application that is to be confidential for purposes of the public hearing. Such documents must be physically segregated from the application and clearly marked.

***ALL APPLICATIONS MUST BE FILED APPROXIMATELY 45 DAYS PRIOR TO THE MEETING OF THE WEST VIRGINIA BOARD OF BANKING AND FINANCIAL INSTITUTIONS. PLEASE CONTACT THE DIVISION OF BANKING FOR THE EXACT DEADLINE FOR FILING.***